



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2003-0089

IN THE MATTER OF:

**MOE OIL COMPANY**  
405 1<sup>st</sup> Avenue, N.W.  
Watertown, South Dakota 57201

Respondent

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**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

9 Sept. 2003  
DATE

SIGNED  
Robert E. Roberts  
Regional Administrator



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF:	)	Docket No. <b>CWA-08-2003-0089</b>
	)	
Moe Oil Company	)	COMPLAINT AND SETTLEMENT
405 1 <sup>st</sup> Avenue, N.W.	)	AGREEMENT ("CASA")
Watertown, South Dakota 57201	)	
<u>Respondent.</u>	)	

Complainant, United States Environmental Protection Agency, Region 8 ("EPA") or ("Complainant"), and Moe Oil Company (hereinafter "Respondent") by their undersigned representatives, hereby consent and agree as follows:

**A. PRELIMINARY STATEMENT**

1. EPA has jurisdiction over this matter pursuant to section 311(b)(6) of the Clean water Act ("Act"), 33 U.S.C. §1321(b)(6).

2. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), as amended by the Oil Pollution Act Amendments of 1990, 33 U.S.C. § 2701 et seq. promulgated regulations at 40 CFR Part 112, which govern this matter.

3. This Complaint Settlement Agreement ("CASA") is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules of Practice.

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.

5. Respondent waives its rights to a hearing before any tribunal, to contest any issue of law or fact set forth in this CASA.

6. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CASA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

7. This CASA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's

responsibilities under this agreement.

8. This CASA contains all terms of the settlement agreed to by the parties.

9. Respondent is a "person" within the meaning of section 311(a)(7), 33 U.S.C. §1321(a)(7) of the Act.

10. Respondent is an "owner and operator" of an "onshore facility" as those terms are defined in sections 311(a)(6) and (10), respectfully, 33 U.S.C. §§1321(a)(6) and (10) of the Act.

11. The undersigned EPA, Region 8 officials issue this CASA under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), which authorizes EPA to bring an action for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the Act.

## **B. ALLEGED VIOLATIONS**

1. The Respondent owns and/or operates a bulk fuel storage facility located at 405<sup>1st</sup> Avenue, Watertown, South Dakota (hereinafter "the facility").

2. On September 19, 2001, Paul Schnitz, an authorized EPA inspector, inspected the facility to ascertain compliance with the Spill Prevention Control and Countermeasure (SPCC) regulations found at 40 CFR Part 112.

3. EPA determined that Respondent failed to prepare and implement a written SPCC Plan for the facility in accordance with the regulations at 40 CFR §112.7(e) and required by 40 CFR §112.3(a).

4. Respondent's failure to comply with regulations at 40 C.F.R. Part 112 setting forth the requirements for preparation and implementation of SPCC Plans constitutes a violation of CWA § 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A).

5. Pursuant to 33 U.S.C. § 1321(b)(6)(B)(i), Respondent is subject to a civil penalty in an amount up to \$10,000 per violation. This penalty has been increased to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Rule, promulgated at 40 C.F.R. Part 19, for violations occurring after January 30, 1997, which includes the violations alleged herein.

6. Upon consideration of the penalty assessment criteria found in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), in addition to such other factors as justice may require, the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts to mitigate the effects of the discharge, the economic impact of the penalty of the violator, and upon

consideration of the entire record herein, EPA offers this CASA under its expedited enforcement procedures in order to settle the violations at the facility based upon the findings noted above, for the total civil penalty amount of **sixteen thousand six hundred thirty two dollars (\$16,632)**.

**C. CIVIL PENALTY**

1. Pursuant to section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8), EPA has determined that an appropriate civil penalty to settle this action is the amount of **sixteen thousand six hundred thirty two dollars (\$16,632)**.

2. Respondent agrees and consents that after Respondent has received the Final Order in this matter, Respondent shall pay a civil penalty of **sixteen thousand six hundred thirty two dollars (\$16,632)** in eight payments of two thousand seventy nine dollars (\$2079.00) each in accordance with the following schedule:

- 1<sup>st</sup> payment of \$2079.00 is due and must be received by not later than 09/30/03;
- 2<sup>nd</sup> payment of \$2079.00 is due and must be received by not later than 12/30/03;
- 3<sup>rd</sup> payment of \$2079.00 is due and must be received by not later than 03/30/04;
- 4<sup>th</sup> payment of \$2079.00 is due and must be received by not later than 06/30/04;
- 5<sup>th</sup> payment of \$2079.00 is due and must be received by not later than 09/30/04;
- 6<sup>th</sup> payment of \$2079.00 is due and must be received by not later than 12/30/04;
- 7<sup>th</sup> payment of \$2079.00 is due and must be received by not later than 03/30/05;
- 8<sup>th</sup> payment of \$2079.00 is due and must be received by not later than 06/30/05;

by remitting a cashier's or certified check **payable to "Oil Spill Liability Trust Fund"**, with the docket number and Respondent's name written on the check, to:

Jane Nakad (8ENF-T)  
Technical Enforcement Program (8ENF-T)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

a. The checks shall reference the name and address of Respondent's facility and the EPA docket number of this action.

b. A copy of the transmittal of payment shall be sent simultaneously to the following address:

Tina Artemis  
Regional Hearing Clerk  
U.S. EPA, Region 8 (8RC)  
999 18th Street, Suite 300  
Denver, Co 80202-2466

(and)

Brenda L. Morris  
Enforcement Attorney  
U.S. EPA, Region 8 (8ENF-L)  
999 18th Street, Suite 300  
Denver, Co 80202-2466

1. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. **Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due.** Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

#### **D. TERMS AND CONDITIONS**

1. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

2. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

3. Nothing in this CASA shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CASA.

4. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CESA and to execute and legally bind that party to this CASA.

5. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

6. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CASA.

7. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement, Compliance  
and Environmental Justice, Complainant.**

Date: 9/5/03

By: SIGNED  
Elisabeth Evans  
Director  
Technical Enforcement Program

Date: 9-5-03

By: David J. Janik  
Michael T. Risner, Director  
David Janik, Supervisor  
Legal Enforcement Program

Date: 9-5-03

By: SIGNED  
Brenda L. Morris, Attorney  
Legal Enforcement Program

**MOE OIL COMPANY  
Respondent.**

Date: 9-3-03

By: SIGNED  
(Signature of authorized representative)  
  
Steve Stone  
(Printed or Typed Name of Signatory)

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **MOE OIL COMPANY, DOCKET NO.: CWA-08-2003-0089** was filed with the Regional Hearing Clerk on September 9, 2003

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on September 9, 2003, to:

Mr. Steve Stone  
Stone Oil Company  
Highway 212 & Interstate 29  
Watertown, SD 57201

and

Commander  
Finance Center (OGR)  
U.S. Coast Guard  
1430 A Kristina Way  
Chesapeake, VA 23326

September 9, 2003

**SIGNED**\_\_\_\_\_

Tina Artemis  
Regional Hearing Clerk